

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 27, 2004 Session

STATE OF TENNESSEE v. ANDREW JOHN BELLAMY

Appeal from the Criminal Court for Sullivan County
No. S45,958 Phyllis H. Miller, Judge

No. E2003-02728-CCA-R3-CD - Filed October 20, 2004

The appellant, Andrew John Bellamy, pled guilty to driving on a revoked license and third offense DUI and reserved, with the consent of the State and the court, the right to appeal a certified question of law that is dispositive of the case. The certified question of law relates to whether the trial court was correct in overruling the appellant's motion to suppress all the evidence introduced against the appellant because of an allegedly illegal stop of his vehicle. For the following reasons, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, J., joined and JAMES CURWOOD WITT, JR., J., not participating.

Kenneth F. Irvine, Jr., Knoxville, Tennessee, for the appellant, Andrew John Bellamy.

Paul G. Summers, Attorney General & Reporter; Kathy D. Aslinger, Assistant Attorney General; Greeley Wells, District Attorney General; and William Crabtree, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On May 19, 2001, Officer Keith Feathers of the Bristol Police Department was working the evening shift when he received a telephone call from his cousin, Todd Martin, an Assistant District Attorney General. General Martin informed Officer Feathers that the appellant was driving a red Mercedes sports car with a black top and that he believed the appellant was driving on a revoked license. During the telephone conversation, General Martin provided Officer Feathers with a detailed description and the license number of the vehicle. When Officer Feathers subsequently

checked this information, he confirmed that the appellant's driver's license had been revoked. At that point, Officer Feathers informed other officers over the radio to be on the lookout for the red sports car.

Sometime later that evening, Officer Feathers received another telephone call from General Martin, who stated that he had gone to a wedding reception at the Holiday Inn in Bristol, Virginia and that the appellant was present. Around 10:30 that night, Officer Feathers contacted the Bristol, Virginia police department and confirmed that the appellant's car was still at the Holiday Inn.

Between the hours of 11:00 p.m. and midnight, Officer Feathers was in the area of Holiday Drive and Highway 11-W in Bristol, Tennessee, when he observed a "red sports car at a high rate of speed going towards Kingsport." The car appeared to be traveling much faster than the posted speed limit of 55 miles per hour. Holiday Drive is approximately one-half of a mile inside the city limits of Bristol.

Officer Feathers immediately turned around and attempted to catch up to the vehicle. He lost sight of the vehicle momentarily, but caught up to the vehicle near a Conoco gas station on Highway 11-W, which is approximately one-half mile outside the Bristol city limits. According to Officer Feathers, he had to drive at "well over a hundred miles an hour" in order to catch up to the vehicle. By the time he caught up to the vehicle, it was traveling at least 80 miles per hour. He realized at that point that the tag number matched that of the appellant's vehicle that had been provided earlier by General Martin. After following the appellant for a short while, Officer Feathers noted that the appellant changed lanes several times and crossed over the right line twice. Officer Feathers activated his onboard camera and his blue lights. He was approximately a mile to a mile-and-a-half outside the city limits at that time. The appellant stopped his vehicle about three-quarters of a mile later, approximately 2.2 miles outside the city limits.

When the vehicle stopped, Officer Feathers approached the vehicle and asked the appellant for his driver's license and registration. The appellant produced a restricted license and stated that it was restricted because he had to wear glasses. Officer Feathers noted that the appellant was "slow to answer questions and he spoke with a thick tongue" and had an "odor of alcoholic beverage about his person." Officer Feathers called into dispatch and discovered that the appellant's license was revoked due to a prior DUI.

Officer Danny Farmer joined Officer Feathers at the scene and administered several field sobriety tasks to the appellant. After attempting two tasks, the appellant claimed that he thought he was having a heart attack, so the officers called for an ambulance. When the ambulance arrived, the appellant was transported to Bristol Regional Medical Center.

On March 27, 2002, a three count indictment was returned against the appellant by a Sullivan County Grand Jury. The appellant was charged with DUI, driving on a revoked license and DUI fifth offense.

The appellant subsequently filed a motion to suppress the evidence gathered as a result of the warrantless seizure of his automobile, arguing that the Bristol police were without jurisdiction to stop the appellant because they were outside the Bristol city limits when the stop occurred. The trial court held a hearing and ultimately denied the motion to suppress.

The appellant pled guilty to driving on a revoked license and third offense DUI, explicitly reserving the right to appeal a certified question of law. The appellant summarized the certified question of law in the trial court as follows:

[The appellant] is specifically reserving the question of whether this Court erroneously denied his motion to suppress all the evidence gathered as the result of the warrantless seizure, stop, and arrest of . . . [the appellant] by officers of the Bristol Police Department. The Court, the State and the defense agree that the suppression issue would have been dispositive in these cases. The Court and prosecution consent to this issue being reserved for appellate review.

The appellant filed a timely notice of appeal seeking resolution of the certified question of law.

Analysis

On appeal, the appellant claims that the trial court erred by refusing to suppress the evidence against him. He argues that Officer Feathers did not have the authority to seize his vehicle because he was a Bristol Police Officer and the seizure occurred outside the Bristol city limits. Specifically, he reasons that because Officer Feathers did not initiate the “investigation” of his vehicle until he was over one mile outside the city limits of Bristol, he lacked the jurisdiction to seize the vehicle, and, accordingly, the seizure of the vehicle was illegal. The State counters that the trial court did not err in denying the motion to suppress.

The authority granted to city police officers is enumerated in Tennessee Code Annotated section 6-54-301, which provides that the “police authority” extends to a “distance of one mile from the lawful corporate limits . . . for the suppression of all disorderly acts and practices forbidden by the general laws of the state.” Tenn. Code Ann. § 6-54-301. In the case herein, the appellant argues that because Officer Feathers did not initiate the stop of his vehicle until he was over one mile outside the city limits of Bristol, he lacked the jurisdiction to seize his vehicle and, thus, any evidence obtained as a result of the stop was illegal.

In Francis v. State, 498 S.W.2d 107 (Tenn. Crim. App. 1973), a case in which a police officer pursued a fleeing defendant outside city limits for the purpose of arresting him, this Court determined that:

Surely it cannot be said with reason that the authority of city policemen to arrest one committing public offenses in their sight and presence is terminated and they become

helpless and barred from arresting such an offender if he succeeds in outrunning them to the city limits, or to the one-mile limit prescribed by . . . [Tenn. Code Ann. § 6-54-301]. Indeed, such a theory would require city police officers seeing a patently drunken driver within the city, in violation of a city ordinance and state law, to abandon pursuit at the one-mile limit and permit him to continue and imperil all persons upon the highway. The arms of municipal law officers are not to be so tied. The one-mile limit prescribed by . . . [Tenn. Code Ann. § 6-54-301] was never intended to provide sanctuary and freedom from arrest for criminals who can outrun the policemen to that line. It is not the law that city policemen seeing law violations within the city must stop their pursuit at that line and permit the fleeing offender to escape before their eyes.

Francis, 498 S.W.2d at 114; see also State v. Gilbert, 751 S.W.2d 454 (Tenn. Crim. App. 1988) (determining that where officer was in pursuit of defendant's vehicle within his jurisdiction, he was authorized to stop the defendant after his vehicle crossed into the next county); Tenn. Op. Atty. Gen. No. 81-340 (opining that a city policeman in fresh pursuit beyond the city limits and one-mile statutory limit retains his status as a city policeman when arresting an offender he was pursuing and that beyond the statutory authority, the policeman has the same authority as a private person has to arrest a person committing a public offense in his presence, whether the policeman observed the offense while in pursuit of the offender or otherwise).

More importantly, perhaps, to the case herein, our supreme court and this Court have maintained that a police officer may make a lawful arrest outside of his or her jurisdiction under the authority given to a private person to make an arrest. That authority is proscribed in Tennessee Code Annotated section 40-7-109, which provides, in pertinent part:

A private person may arrest another:

- (1) For a public offense committed in the arresting person's presence;
- (2) When the person arrested has committed a felony, although not in the arresting person's presence; or
- (3) When a felony has been committed, and the arresting person has reasonable cause to believe that the person arrested committed it.

Tenn. Code Ann. § 40-7-109(a); See also State v. Johnson, 661 S.W.2d 854, 858-59 (Tenn. 1983) (determining that an officer had authority to arrest a defendant in another county under private arrest statute where the officer had probable cause to believe that the defendant was in possession of stolen guns); Francis, 498 S.W.2d at 114-16.

In State v. Donnie Alfred Johnson, No. 02C01-9707-CC-00261, 1998 WL 464898 (Tenn. Crim. App. at Jackson, Aug. 11, 1998), this Court allowed an officer to arrest a defendant for driving under the influence and possession of marijuana with intent to sell or deliver despite the fact that the officer was outside his jurisdiction at the time of the arrest. In Donnie Alfred Johnson, a New Johnsonville Police Officer followed a vehicle into Benton County, outside his jurisdiction. After

reporting his suspicion to a Benton County law enforcement agency that the driver of the vehicle was driving while intoxicated, the officer turned around to return to Humphreys County. Shortly after turning around, the officer observed a black Camaro traveling 85 miles per hour in a 40-mile-per-hour zone. The officer activated his blue lights and proceeded to stop the vehicle. The defendant challenged his seizure on appeal, arguing that the officer had no jurisdiction for the arrest. This Court determined, like in Johnson and Francis, that the officer had the authority to arrest the defendant for speeding under the private arrest statute, noting that a “police officer does not give up the right to act as a private citizen when he is off duty or out of his jurisdiction.” Donnie Alfred Johnson, 1998 WL 464898, at *1-*2 (quoting State v. Horace Durham, No. 01C01-9503-CC-00056, 1995 WL 678811, at *2 (Tenn. Crim. App. at Nashville, Nov. 16, 1995)). An officer simply does not lose his or her right to act under the private arrest statute because the officer was on duty and stated that he or she was acting as a police officer. Durham, 1995 WL 678811, at *2.

We conclude that the appellant herein was lawfully arrested by the city policeman even though the arrest was made outside the officer’s jurisdiction. Officer Feathers had the authority to stop and arrest the appellant under the private arrest statute although when he made such an arrest, he acted at his own peril. See id. at *2. From the facts in the record of the suppression hearing, it is clear that the officer had probable cause to stop the appellant. When Officer Feathers first observed the appellant speeding in his red sports car, he was still inside the city limits of Bristol. Officer Feathers immediately turned around and began to pursue the vehicle, reaching speeds of over 100 miles per hour to catch up with the appellant. Officer Feathers caught up with the vehicle about one-half mile outside the city limits, where the appellant was traveling approximately 80 miles per hour in a 55-mile-per-hour zone. Officer Feathers also had a reasonable belief that the appellant was driving on a revoked license and witnessed the appellant cross the white line two times.

It is “good public policy to encourage law enforcement officers to stop drivers who appear to be intoxicated and who may be endangering themselves and the public regardless of where the officers observes the impaired driving.” Id. Accordingly, we conclude that the appellant was lawfully stopped by the officer and that the trial court was correct in overruling the appellant’s motion to suppress the evidence gathered as a result thereof.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE